

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN**

MILWAUKEE ELECTRIC TOOL CORPORATION,)
METCO BATTERY TECHNOLOGIES, LLC,)
AC (MACAO COMMERCIAL OFFSHORE) LIMITED,)
and TECHTRONIC INDUSTRIES CO. LTD.,) CASE NO. _____
Plaintiffs,) PATENT CASE
v.) JURY DEMANDED
HITACHI LTD., and HITACHI KOKI U.S.A., LTD.,)
Defendants.)

COMPLAINT FOR PATENT INFRINGEMENT

Milwaukee Electric Tool Corporation, Metco Battery Technologies, LLC, AC
(COMERCIAL OFFSHORE DE MACAU) LIMITADA and Techtronic Industries Co. Ltd.
(collectively "Plaintiffs"), by their undersigned attorneys, file this Complaint against the
Defendants, Hitachi Ltd. and Hitachi Koki U.S.A., Ltd. (collectively "Defendants"), alleging as
follows:

THE PARTIES

1. Plaintiff Milwaukee Electric Tool Corporation ("Milwaukee") is a Delaware corporation with its principal place of business located at 13135 West Lisbon Road, Brookfield, Wisconsin 53005.
2. Plaintiff Metco Battery Technologies, LLC ("MBT") is a Delaware company with its principal place of business located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

3. Plaintiff AC (COMERCIAL OFFSHORE DE MACAU) LIMITADA ("TTi Macao"), is a Macao corporation with its principal place of business located at Avenida da Praia Grande, n.^o 429 – Centro Comercial da Praia Grande, 26.º andar "D."

4. Plaintiff Techtronic Industries Co. Ltd. ("TTi Hong Kong"), is a Hong Kong corporation with its principal place of business located at 24/F CDW Building, 388 Castle Peak Road, Tsuen Wan, New Territories, Hong Kong.

5. Upon information and belief, Defendant Hitachi Ltd. ("Hitachi Japan") is a foreign corporation organized and existing under the laws of Japan having a principal place of business at 6-6 Marunouchi 1-Chrome Chiyoda-KU, Tokyo Japan, 100-8280.

6. Upon information and belief, Defendant Hitachi Koki U.S.A., Ltd. ("Hitachi USA") is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 3950 Steve Reynolds Blvd., Norcross, GA 30093.

JURISDICTION AND VENUE

7. This is an action for patent infringement founded upon the patent laws of the United States, 35 U.S.C § 100 *et seq.* Jurisdiction is based on 28 U.S.C. § 1338(a). Venue is based on 28 U.S.C. §§ 1391 and 1400(b).

8. Upon information and belief, Defendants Hitachi Japan and Hitachi USA (collectively, "Hitachi"), regularly transact business in the State of Wisconsin and in this judicial district by, among other things, the sale and importation into the United States of power tools and power tool battery packs and chargers. Hitachi's power tools, including those mentioned in the paragraphs that follow, are available for purchase at a number of different retailers in this judicial district.

THE PATENTS IN SUIT

9. On January 16, 2007, United States Patent No. 7,164,257 (the " '257 patent") was duly and properly issued to Todd W. Johnson et al., for an invention entitled "Method and System for Protection of a Lithium-Based Multicell Battery Pack Including a Heat Sink."

10. Milwaukee, TTi Macao, and TTi Hong Kong are co-owners by assignment of the '257 Patent.

11. MBT has a license to certain exclusive rights under the '257 Patent.

12. On February 13, 2007, United States Patent No. 7,176,654 ("the '654 patent") was duly and properly issued to Gary D. Meyer et al., for an invention entitled "Method and System of Charging Multi-Cell Lithium-Based Batteries."

13. Milwaukee, TTi Macao, and TTi Hong Kong are co-owners by assignment of the '654 patent.

14. MBT has a license to certain exclusive rights under the '654 patent.

15. On January 29, 2008, United States Patent No. 7,323,847 ("the '847 patent") was duly and properly issued to Gary D. Meyer et al., for an invention entitled "Method and System of Charging Multi-Cell Lithium-Based Batteries."

16. Milwaukee, TTi Macao, and TTi Hong Kong are co-owners by assignment of the '847 patent.

17. MBT has a license to certain exclusive rights under the '847 patent.

18. On March 24, 2009, United States Patent No. 7,508,167 ("the '167 patent") was duly and properly issued to Gary D. Meyer et al., for an invention entitled "Method and System for Charging Multi-Cell Lithium-Based Batteries."

19. Milwaukee, TTi Macao, and TTi Hong Kong are co-owners by assignment of the '167 patent.

20. MBT has a license to certain exclusive rights under the '167 patent.

21. On June 30, 2009, United States Patent No. 7,554,290 ("the '290 patent") was duly and properly issued to Todd W. Johnson et al., for an invention entitled "Lithium-Based Battery Pack for a Hand-Held Power Tool."

22. Milwaukee, TTi Macao, and TTi Hong Kong are co-owners by assignment of the '290 patent.

23. MBT has a license to certain exclusive rights under the '290 patent.

COUNT I
(INFRINGEMENT OF THE '257 PATENT)

24. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-23.

25. Hitachi sells several lines of power tools that use lithium-ion battery packs, including, but not limited to its 25.2 volt products, its 18 volt products, and its 14.4 volt products. As part of these product lines, Hitachi also sells lithium-ion battery packs of various voltages and amperages either separately or along with its lithium-ion power tool products. Upon information and belief, these battery packs include multiple cells and a controller that is capable of identifying certain characteristics of the battery packs and/or cells and controlling functions of the battery packs and/or cells. Upon information and belief, Hitachi has offered for sale and/or sold these battery packs under various part numbers or designations, including but not limited to the following part numbers or designations: BSL 2530; BSL 1830; EBM 1830; BSL 1815X; BCL 1815; EBL 1430; BSL 1430; BCL 1430; BSL 1415X; BCL 1415; BCL 1015.

26. Hitachi is directly infringing, inducing infringement, and contributorily infringing Plaintiffs' exclusive rights in the '257 patent by manufacturing, importing, using, offering for sale, and/or selling products that embody the inventions of and are within the scope of the '257 patent, and/or by causing others to offer for sale, sell, and use the infringing products. Products sold under the "Hitachi" brand name that embody the inventions of and are within the scope of the '257 patent include but are not limited to, one or more of the lithium-ion battery packs identified in paragraph 25.

27. The acts of Hitachi complained of herein constitute direct and indirect infringement of the '257 patent in violation of 35 U.S.C. § 271.

28. Upon information and belief, Hitachi was aware of the '257 patent prior to the filing of this lawsuit.

COUNT II
(INFRINGEMENT OF THE '654 PATENT)

29. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-28.

30. Hitachi sells several lines of power tools that use lithium-ion battery packs, including, but not limited to its 25.2 volt products, its 18 volt products, and its 14.4 volt products. As part of these product lines, Hitachi also sells lithium-ion battery packs of various voltages and amperages either separately or along with its lithium-ion power tool products. Upon information and belief, these battery packs include multiple cells. Upon information and belief, Hitachi has offered for sale and/or sold these battery packs under various part numbers or designations, including but not limited to the following part numbers or designations: BSL 2530; BSL 1830; EBM 1830; BSL 1815X; BCL 1815; EBL 1430; BSL 1430; BCL 1430; BSL 1415X; BCL 1415; BCL 1015.

31. As part of its lithium-ion product lines, Hitachi also offers for sale and/or sells various battery chargers for charging its lithium-ion battery packs, including but not limited to the battery chargers offered for sale and/or sold under one or more of the following part numbers or designations: UC36YRL; UC26YRL; UC18YGSL; UC18YRSL; UC18YRL; UC18YGL; and UC18YFL. Upon information and belief, these battery chargers are capable of charging lithium-ion battery packs having different voltages.

32. Hitachi is directly infringing, inducing infringement, and contributorily infringing Plaintiffs' exclusive rights in the '654 patent by manufacturing, importing, using, offering for sale, and/or selling products that embody the inventions of and are within the scope of the '654 patent, and/or by causing others to offer for sale, sell, and use the infringing products. Products sold under the "Hitachi" brand name that embody the inventions of and are within the scope of the '654 patent include but are not limited to, one or more of the power tools, lithium-ion battery packs, and related battery chargers identified in paragraphs 30 and 31.

33. The acts of Hitachi complained of herein constitute direct and indirect infringement of the '654 patent in violation of 35 U.S.C. § 271.

COUNT III
(INFRINGEMENT OF THE '847 PATENT)

34. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-33.

35. Hitachi sells several lines of power tools that use lithium-ion battery packs, including, but not limited to its 25.2 volt products, its 18 volt products, and its 14.4 volt products. As part of these product lines, Hitachi also sells lithium-ion battery packs of various voltages and amperages either separately or along with its lithium-ion power tool products. Upon information and belief, these battery packs include multiple cells. Upon information and belief,

Hitachi has offered for sale and/or sold these battery packs under various part numbers or designations, including but not limited to the following part numbers or designations: BSL 2530; BSL 1830; EBM 1830; BSL 1815X; BCL 1815; EBL 1430; BSL 1430; BCL 1430; BSL 1415X; BCL 1415; BCL 1015.

36. As part of its lithium-ion product lines, Hitachi also offers for sale and/or sells various battery chargers for charging its lithium-ion battery packs, including but not limited to the battery chargers offered for sale and/or sold under one or more of the following part numbers or designations: UC36YRL; UC26YRL; UC18YGSL; UC18YRSL; UC18YRL; UC18YGL; and UC18YFL. Upon information and belief, these battery chargers include a controller and are capable of charging lithium-ion battery packs having different voltages.

37. Hitachi is directly infringing, inducing infringement and contributorily infringing Plaintiffs' exclusive rights in the '847 patent by manufacturing, importing, using, offering for sale, and/or selling products that embody the inventions of and are within the scope of the '847 patent, and/or by causing others to offer for sale, sell, and use the infringing products. Products sold under the "Hitachi" brand name that embody the inventions of and are within the scope of the '847 patent include, but are not limited to, one or more of the battery chargers identified in paragraph 36.

38. The acts of Hitachi complained of herein constitute direct and indirect infringement of the '847 patent in violation of 35 U.S.C. § 271.

COUNT IV
(INFRINGEMENT OF THE '167 PATENT)

39. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-38.

40. Hitachi sells several lines of power tools that use lithium-ion battery packs, including, but not limited to its 25.2 volt products, its 18 volt products, and its 14.4 volt products. As part of these product lines, Hitachi also sells lithium-ion battery packs of various voltages and amperages either separately or along with its lithium-ion power tool products. Upon information and belief, these battery packs include multiple cells. Upon information and belief, Hitachi has offered for sale and/or sold these battery packs under various part numbers or designations, including but not limited to the following part numbers or designations: BSL 2530; BSL 1830; EBM 1830; BSL 1815X; BCL 1815; EBL 1430; BSL 1430; BCL 1430; BSL 1415X; BCL 1415; BCL 1015.

41. As part of its lithium-ion product lines, Hitachi also offers for sale and/or sells various battery chargers for charging its lithium-ion battery packs, including but not limited to the battery chargers offered for sale and/or sold under one or more of the following part numbers or designations: UC36YRL; UC26YRL; UC18YGSL; UC18YRSL; UC18YRL; UC18YGL; and UC18YFL. Upon information and belief, these battery chargers include a controller and are capable of monitoring the state of charge of individual cells in the battery packs and charging the battery packs based, at least in part, on the state of charge of individual cells.

42. Hitachi is directly infringing, inducing infringement, and contributorily infringing Plaintiffs' exclusive rights in the '167 patent by manufacturing, importing, using, offering for sale, and/or selling products that embody the inventions of and are within the scope of the '167 patent, and/or by causing others to offer for sale, sell, and use the infringing products. Products sold under the "Hitachi" brand name that embody the inventions of and are within the scope of the '167 patent, include, but are not limited to, one or more of the power tools, battery packs, and related battery chargers identified in paragraphs 40 and 41.

43. The acts of Hitachi complained of herein constitute direct and indirect infringement of the '167 patent in violation of 35 U.S.C. § 271.

COUNT V
(INFRINGEMENT OF THE '290 PATENT)

44. Plaintiffs incorporate and re-allege as if fully set forth herein each and every allegation contained in paragraphs 1-43.

45. Hitachi sells several lines of power tools that use lithium-ion battery packs, including, but not limited to its 25.2 volt products, its 18 volt products, and its 14.4 volt products. As part of these product lines, Hitachi also sells lithium-ion battery packs of various voltages and amperages either separately or along with its lithium-ion power tool products. Upon information and belief, these battery packs include multiple cells. Upon information and belief, Hitachi has offered for sale and/or sold these battery packs under various part numbers or designations, including but not limited to the following part numbers or designations: BSL 2530; BSL 1830; EBM 1830; BSL 1815X; BCL 1815; EBL 1430; BSL 1430; BCL 1430; BSL 1415X; BCL 1415; BCL 1015.

46. Hitachi is directly infringing, inducing infringement, and contributorily infringing Plaintiffs' exclusive rights in the '290 patent by manufacturing, importing, using, offering for sale, and/or selling products that embody the inventions of and are within the scope of the '290 patent, and/or by causing others to offer for sale, sell, and use the infringing products. Products sold under the "Hitachi" brand name that embody the inventions of and are within the scope of the '290 patent, include, but are not limited to, one or more of the battery packs identified in paragraph 45.

47. The acts of Hitachi complained of herein constitute direct and indirect infringement of the '290 patent in violation of 35 U.S.C. § 271.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Hitachi as follows:

- A. Finding that Hitachi has infringed, induced others to infringe, and/or contributed to the infringement of the ‘257 patent, the ‘654 patent, the ‘847 patent, the ‘167 patent, and/or the ‘290 patent;
- B. Awarding damages to Plaintiffs under 35 U.S.C. § 284, along with interest and costs for Hitachi’s infringement of the ‘257 patent, the ‘654 patent, the ‘847 patent, the ‘167 patent, and/or the ‘290 patent;
- C. Finding that this case is an exceptional case under 35 U.S.C. § 285, and awarding Plaintiffs their attorneys fees;
- D. Finding that Hitachi’s infringement of at least the ‘257 patent was willful, and trebling any damages found or assessed;
- E. Entering a permanent injunction under 35 U.S.C. § 283 enjoining Hitachi, its officers, partners, employees, agents, parents, subsidiaries, attorneys, and anyone acting or participating with them, from manufacturing, making, selling, offering for sale, importing, or using a product that infringes the ‘257 patent, the ‘654 patent, the ‘847 patent, the ‘167 patent, and/or the ‘290 patent; and
- F. Awarding to Plaintiffs such other and further relief as the Court may deem just and equitable.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all matters and issues triable by a jury.

Dated: October 1st, 2009

Respectfully submitted,



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